

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1998 SESSION

**FILED**

May 14, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

ELWIN NATHANIEL SOUTH, SR., )  
 )  
Appellant, )  
 )  
VS. )  
 )  
STATE OF TENNESSEE, )  
 )  
Appellee. )

C.C.A. No. 02C01-9710-CR-00386

SHELBY COUNTY  
No. M-14361

AFFIRMED - RULE 20

ORDER

The defendant, Elwin Nathaniel South, Sr., appeals the order of the Shelby County Criminal Court denying his Tenn. R. Crim. P. 35(b) motion for reduction of sentence. Finding no abuse of discretion by the trial court, we affirm the judgment pursuant to Rule 20, Rules of the Court of Criminal Appeals.

Defendant pled guilty in 1993 to three (3) counts of attempted aggravated rape and was sentenced to concurrent eight-year terms of confinement. Subsequently, he filed a motion for reduction of sentence pursuant to Tenn. R. Crim. P. 35(b).<sup>1</sup> At the evidentiary hearing the seventy-three (73) year old defendant testified, in essence, that he was rehabilitated and had been denied parole.

In the order denying the motion the trial court noted that these three (3) offenses involved the sexual fondling of defendant's three (3) granddaughters, all under the age of thirteen (13). The trial court further noted the extreme seriousness

---

<sup>1</sup>The trial court originally dismissed the motion as being untimely filed. This Court remanded to the trial court as to the issue of untimeliness. State v. Elwin South, C.C.A. No. 02C01-9502-CR-00051, Shelby County (Tenn. Crim. App. filed May 7, 1997, at Jackson). Upon remand the trial court conducted an evidentiary hearing on the merits of the motion.

of the offenses and the devastating effect upon the victims. The trial court denied relief.

This Court's appellate review of the ruling on a Rule 35(b) motion for reduction of sentence is governed by an abuse of discretion standard. State v. Irick, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993). After a careful review of the record, we find no abuse of discretion by the trial court in denying the motion.

We are unable to find any error in the proceedings below. Accordingly, it is hereby ORDERED that the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals. Since the record reflects that the defendant is indigent, costs of this proceeding shall be assessed to the state.

ENTER:

---

**JOE G. RILEY, JUDGE**

---

**DAVID G. HAYES, JUDGE**

(Not Participating)  

---

**WILLIAM M. BARKER, JUDGE**